

## 25.202 Exceptions.

(a) When one of the following exceptions applies, the *contracting officer* may allow the contractor to acquire *foreign construction materials* without regard to the restrictions of the Buy American statute:

(1) *Impracticable or inconsistent with public interest.* The *head of the agency* may determine that application of the restrictions of the Buy American statute to a particular *construction material* would be impracticable or would be inconsistent with the public interest. The public interest exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American statute.

(2) *Nonavailability.* The head of the *contracting activity* may determine that a particular *construction material* is not mined, produced, or manufactured in the *United States* in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at [25.104\(a\)](#) and the procedures at [25.103\(b\)\(1\)](#) also apply if any of those articles are acquired as *construction materials*. A determination is not required before January 1, 2030, if there is an *offer* for a *foreign construction material* that exceeds 55 percent domestic content (see [25.204\(b\)\(1\)\(ii\)](#) and [25.204\(b\)\(2\)\(ii\)](#)).

(3) *Unreasonable cost.* The *contracting officer* concludes that the cost of *domestic construction material* is unreasonable in accordance with [25.204](#).

(4) *Information technology that is a commercial product.* The restriction on purchasing *foreign construction material* does not apply to the *acquisition* of *information technology* that is a *commercial product*, when using Fiscal Year 2004 or subsequent fiscal year funds (section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004, and similar sections in subsequent appropriations acts).

(b) *Determination and findings.* When a determination is made for any of the reasons stated in this section that certain *foreign construction materials* may be used, the *contracting officer* must list the excepted materials in the contract. The agency *must* make the findings justifying the exception available for public *inspection*.

(c) *Acquisitions under trade agreements.* For construction contracts with an estimated *acquisition* value of \$6,708,000 or more, see [subpart 25.4](#).

**Parent topic:** [Subpart 25.2 - Buy American-Construction Materials](#)